IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8744 of 2007
With
CRIMINAL MISC.APPLICATION No. 8929 of 2007
With
CRIMINAL MISC.APPLICATION No. 8930 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HITESHBHAI RAVJIBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR HARSHADRAY A DAVE for Respondent(s) : 2,
MR HARDIK A DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2007

COMMON ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives service of rule on behalf of the respondent No.1

– State and Shri Hardik Dave, learned advocate waives service of rule on behalf of the respondent No.2 in each of the applications. With the consent of the learned advocates appearing on behalf of the respective parties, these matters are taken up for final hearing today. As common question of law and facts arise in these group of applications, they are being disposed of by this common judgment and order.

2. Criminal Misc. Application No.8744 of 2007 is filed by the applicant – original accused to quash and set aside the criminal complaint registered as case No.1873 of 2007 pending in the Court of learned JMFC, Court No.13, Surat and order dated 18.1.2007 issuing summons to the applicant in the said complaint.

Criminal Misc. Application No.8929 of 2007 is filed by the applicant – original accused to quash and set aside the criminal complaint registered as criminal case No.1878 of 2007

pending in the Court of learned JMFC, Court No.12, Surat as well as the order dated 18.1.2007 passed by the learned Magistrate issuing summons to the applicant in the said complaint.

Criminal Misc. Application No.8930 of 2007 is filed by the applicant – original accused to quash and set aside the criminal complaint being criminal case No.1879 of 2007 pending in the Court of learned JMFC, Court No.12, Surat as well as the order dated 18.1.2007 issuing summons to the applicant in the said complaint.

3. The aforesaid three criminal complaints are filed by the respondent No.2 herein against the respective applicants before the learned trial Court for the offences punishable under section 138 of the Negotiable Instrument Act; 1881 (hereinafter referred to as “the NI Act” for short) and in the said complaints, the learned Magistrate has issued the summons against the

respective applicants for the offences under section 138 of the NI Act and being aggrieved and dissatisfied by the same, the respective applicants – original accused have preferred present applications for quashing and setting aside aforesaid complaints as well as the orders passed by the learned trial Court in issuing the summons against the respective applicants.

4. Shri Ashim Pandya, learned advocate appearing for the respective applicants – original accused has submitted that in the respective complaints, the original complainant has suppressed three vital documents i.e. notice dated 27.9.2006, reply dated 3.11.2006 submitted by the complainant in response to the notice and reply dated 15.11.2006 submitted by the applicants to the notice issued by the complainant under section 138 of the NI Act and by suppressing aforesaid three documents, the complainant has filed the aforesaid three complaints in the Court of learned JMFC, Surat. It is submitted by him that the complainant has deliberately not

mentioned these important facts which has direct bearing on the decision of the learned JMFC for the decision whether to issue process or not. It is also further submitted that the complainant has deliberately chosen not to produce these documents with the complaint. It is submitted that the learned Magistrate has issued the summons against the respective applicants under section 138 of the NI Act on the basis of the facts set out in the complaints. It is submitted by Shri Pandya, learned advocate appearing for the respective applicants – original accused relying upon the decision of the Hon'ble Supreme Court in case of **Pepsi Foods Limited V/s. Special Judicial Magistrate** reported in **AIR 1998 SC 128** that summoning of an accused in a criminal case is a serious matter and Criminal Law cannot be set into motion as a matter of course. It is submitted that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the

complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. Shri Pandya, learned advocate appearing for the respective applicants – original accused has submitted that if the order passed by the learned Magistrate issuing the summons against the respective applicants for the offence under section 138 of the NI Act is set aside and the matter is remanded to the learned trial Court for reconsideration of its decision in issuing summons upon the respective applicants, considering the aforesaid three documents, in that case, he has no object and he is not pressing for the relief of quashing and setting aside the impugned complaints / criminal cases.

5. Shri Hardik Dave, learned advocate appearing for the respondent No.2 – original complainant in each of the application has submitted that without prejudice to his rights and contentions before the learned trial Court and keeping all

the questions open if the order of issuing the summons is set aside and the matter is remanded to the learned trial Court for reconsidering its decision in issuing summons against the respective applicants, he is not pressing for the reasoned order, however, the learned Magistrate be directed to take his own decision in accordance with law and on the merits of the matters without in any way being influenced by the present order.

6. In view of the above limited consensus between the parties, to remand the matters to the learned trial Court to reconsider the question of issuance of summons against the respective applicants and considering the request made on behalf of the respective parties not to pass detailed reasoned order, this Court is not passing any further detailed reasoned order and the impugned orders dated 18.1.2007 passed by the concerned trial Court passed in criminal cases No.1873 of 2007, 1878 of 2007 and 1879 of 2007 in issuing summons against the respective

applicants for the offences under section 138 of the NI Act are hereby quashed and set aside and the matters are remanded to the concerned Court of the learned JMFC, Surat to reconsider its own decision of issuing summons against the respective applicants considering aforesaid three documents and the concerned Court of learned JMFC, Surat is directed to take an appropriate decision afresh in accordance with law and on merits as to whether to issue summons upon the respective applicants or not, after considering aforesaid three documents and without in any way being influenced by the present order. The said exercise to be completed within a period of two months from the date of receipt of this order and the respondent No.2 herein – original complainant is directed to produce aforesaid three documents before the concerned Court of learned JMFC, Surat in the aforesaid criminal cases. It goes without saying that this Court has not expressed any opinion on the merits and it is, ultimately, for the concerned learned JMFC, Surat to pass an

appropriate order considering the materials on record. Rule is made absolute to the aforesaid extent in each of the application.

(M.R.Shah, J.)

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